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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,312	03/18/2004	Gary A. Freeman	04644-097002	7307
26161	7590	02/23/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			MULLEN, KRISTEN DROESCH	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,312

Applicant(s)

FREEMAN

Examiner

Kristen Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/26/06 (IDS).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/18/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/14/05, 12/19/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: IDS 1/26/06.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 22, A, B, C, 409.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 116c.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "32" has been used to designate both the speaker and the printed instructions. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The abstract of the disclosure is objected to because it is over 150 words in length. Correction is required. See MPEP § 608.01(b).
5. The specification contains references to parent applications by their application numbers. Some or all of these applications have since been issued or been abandoned. The examiner respectfully requests that the parent application information be updated in the specification along

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with any other referenced application numbers in the specification that have matured into patents or have been abandoned.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 9, 11-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the user" in line 2.

Claim 11 recites the limitation "the user" in line 2.

Claim 12 recites the limitation "the user" in line 9.

There is insufficient antecedent basis for these limitations in these claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1-9 and 12-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson et al. (5,645,571).

Regarding claim 1, Olson shows at least one first high-voltage defibrillation electrode (50); at least one second high-voltage defibrillation electrode (50) (Figure 5); at least one manually operable control (18) mechanically connected with (via lead system) and in the vicinity of at least one of the first and second electrodes; a resuscitation control system (74) electrically connected to the at least one manually operated control (18) and is configured to provide resuscitation prompts to a rescuer based on use of the manually operable control by a rescuer (Col. 5, lines 26-Col. 6, line 21; Fig. 6).

With respect to claim 2, Olson shows a plurality of manually operable controls (18, 28 and 90) mechanically connected (via lead system) with at least one of the first and second electrodes (50) (Col. 4, lines 55-58; Col. 5, lines 26-Col. 6, line 21; Figs. 2, 6).

Regarding claim 8, Olson further shows a sternum electrode and an apex electrode (Fig. 5).

With respect to claim 9, Olson shows the manually operable control is a button (18).

With respect to claim 12, Olson shows at least two defibrillation electrodes (50) (Fig. 5); a circuit (86); a source of ECG signals (50), a control box (1) that receives and processes ECG signals and issues instructions to a user to either deliver a defibrillation shock or perform CPR (Col. 5, line 52-Col. 6, line 21; Figs. 1-2, 6).

Regarding claims 13-14, Olson shows the control box includes a user operable control (18) which is a button (Figs 1-2)

With respect to claim 16, Olson shows the source of ECG signals is the defibrillation electrodes (Col. 5, line 52-Col.6, line 21, Fig. 6).

Regarding claim 17, Olson shows the circuit (86) is located in the control box (Fig. 6).

The functional language and statements of intended use have been carefully considered but are not considered to impart any further structural limitations over the prior art. The following statements are considered functional language or statements of intended use:

- “pause” in the context of “pause control”
- “for pausing a resuscitation procedure”
- “help” in the context of “help button”
- “for requesting prompts from the resuscitation control system with respect to a particular aspect of resuscitation”
- “the particular aspect of resuscitation comprises clearing a patient's airway”
- “the particular aspect of resuscitation comprises assisting a patient's breathing”
- “the particular aspect of resuscitation comprises assisting a patient's circulation”.
- “sternum” in the context of “sternum electrode”
- “apex” in the context of “apex electrode”

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- “defibrillation” in the context of “defibrillation electrodes”
- “*for* delivering a defibrillation shock”
- “defibrillation” in the context of “defibrillation circuit”
- “*for* delivering a defibrillation shock to the defibrillation electrodes”
- “*to* determine whether a defibrillation shock should be delivered or whether CPR should be performed”
- “the determination of whether CPR should be performed and the instructions to perform CPR *can* occur at substantially any point during a rescue”
- “instructions *for* initiating delivery of a defibrillation shock”
- “*to* deliver a defibrillation shock”
- “instructions *to* activate the user operable control”
- “the determination of whether CPR should be performed and the instructions to perform CPR *can* occur before a determination”
- “to deliver any defibrillation shock”.

If applicant wishes to describe their apparatus by how it functions rather than its structural components, the examiner suggests utilizing means-plus-function language. If applicant wishes to describe their invention by how it is used, the examiner suggests utilizing a method claim.

10. Claims 10-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Groenke et al. (6,125,299).

Regarding claim 10, Groenke shows a CPR pad (102 in Figs. 4-5, or the bottom portion of electrode 150A in Figs. 6-7), a compression sensing element (200) interconnected with the

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pad; a resuscitation control system (74) electrically connected to the compression sensing element and configured to receive compression information; at least one manually operated control (18) mechanically connected with (via lead system) the CPR pad (Figs. 3a-3b, 4-7). Via incorporation by reference of Olson et al. (5,645,571), Groenke also shows the resuscitation control system (74) is configured to provide resuscitation prompts to a rescuer based on use of the manually operable control by a rescuer (Groenke Col. 3, lines 42-46, Olsen, Col. 5, lines 26-Col. 6, line 21).

With respect to claim 11, Groenke shows the manually operable control is a button (18).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WO 99/24114 and Nova et al. each disclose an integrated defibrillator and CPR system that includes a circuitry adapted for prompting a user to perform various resuscitation tasks. Myklebust et al (6,351,671) shows a defibrillator and CPR pad with a compression sensor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristen Mullen
Patent Examiner
Art Unit 3766

KDM



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